

**Final Order Denying Refund: 04-20190279R
Gross Retail Tax
For The Tax Year 2018**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Car dealership ("Business") requested a refund of taxes it collected and remitted from the sale of a vehicle. The dealership did not refund the taxes to the customer who purchased the vehicle and was therefore not entitled to a refund. The refund was therefore denied correctly.

ISSUE

I. Gross Retail Tax–Refund.

Authority: IC § 6-2.5-2-3; IC § 6-2.5-6-14.1; IC § 6-8.1-9-1; Fla. Stat. § 212.05.

Business seeks a refund of gross retail tax paid on a vehicle purchased by a customer for out-of-state use.

STATEMENT OF FACTS

Business is located in Indiana. In August 2018, Business sold a vehicle to a customer, who purchased the vehicle with the apparent intent to transport and register it in Florida. Following the sale, the customer disputed the imposition of Indiana gross retail tax on the sale of the vehicle. The customer requested a refund of the tax from Business, but it had already remitted the tax to the Indiana Department of Revenue ("Department"). Business now requests a refund of the tax. An administrative hearing was held and this Final Order Denying Refund results. Further facts will be supplied as required.

I. Gross Retail Tax–Refund

DISCUSSION

Business requests a partial refund of the gross retail tax it collected and remitted, claiming that the customer should have been charged the lower Florida sales tax rate on the vehicle. Business asks that the Department return the excess remitted tax to Business, claiming it will then refund the tax to the customer.

As a threshold issue, Business's argument that the customer is entitled to a refund appears correct. IC § 6-2.5-2-3(b) states:

Notwithstanding section 2 of this chapter, the state gross retail tax rate on a motor vehicle that a purchaser intends to:

- (1) transport to a destination outside Indiana within thirty (30) days after delivery; and
 - (2) title or register for use in another state or country;
- is the rate of that state or country (excluding any locally imposed tax rates) as certified by the seller and purchaser in an affidavit satisfying the requirements of subsection (c).

Therefore, a customer who purchases a vehicle in Indiana with the intent to transport and title or register it in another state is subject to the tax rate of the state in which the customer intends to register it.

In this case, Business claims that the customer intended to transfer and title the vehicle in Florida, which has a 6 percent sales tax rate. FL ST § 212.05. The vehicle invoice from Business shows that 7 percent gross retail tax was collected instead. IC § 6-8.1-9-1(a) allows a person who has paid more tax than is due to file a claim for refund. Should the customer file a claim for refund and provide evidence that he intended to transport and title his car in Florida, he may be entitled to a refund of the excess taxes paid.

But the issue presented is not whether the customer is entitled to a refund. Instead, Business filed the refund claim without refunding tax to the customer. The Department must therefore determine whether Business may receive the refund on behalf of its customer.

When a retail merchant collects state gross retail tax erroneously, it may only seek a refund from the Department if it refunds those taxes to the person from whom they were collected. IC § 6-2.5-6-14.1. Business confirmed at the hearing that it had not yet refunded any tax to the customer. Likewise, Business provided no evidence that it had obligated itself to refund taxes to the customer. Without an enforceable agreement guaranteeing that the tax refund will reach the customer, Business fails to meet the necessary condition entitling it to a refund under IC § 6-2.5-6-14.1.

Although the customer may be entitled to a refund, Business failed to assure the Department that a refund paid to Business would necessarily be refunded to the customer. Because Business could not meet the necessary condition under IC § 6-2.5-6-14.1, it is not entitled to a refund. Should the customer wish to pursue a refund, he may file an appropriate refund claim with supporting evidence to the Department pursuant to IC § 6-8.1-9-1.

FINDING

Business's protest is denied.

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